

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 GARY OSTER,

12 Plaintiff,

13 v.

14 HAROLD CLARKE, *et al*,

15 Defendants.
16
17
18

Case No. C07-5508RJB-KLS

ORDER DENYING PLAINTIFF'S
REQUEST FOR CONTINUANCE
AND REQUEST FOR DEFAULT
AND/OR ADDRESSES

19 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
20 636(b)(1), Local Rules MJR 3 and 4, and Rule 72 of the Federal Rules of Civil Procedure. The case is
21 before the Court upon plaintiff's filing of two requests addressed to the Clerk, one seeking a continuance
22 in this matter (Dkt. #34) and the other seeking to file a motion for default or, in the alternative, a motion
23 for the Washington State Department of Corrections ("DOC") to provide the current addresses of
24 defendants Bill Franks and Victoria Roberts (Dkt. #38). After reviewing the motion and the balance of
25 the record, the Court finds and ORDERS as follows:

26 A. Plaintiff's Request for a Continuance

27 On May 27, 2008, the Court issued its pretrial order, setting forth the discovery and other pretrial
28 deadlines in this case. (Dkt. #30). On June 18, 2008, the Court denied a request plaintiff addressed to the
Clerk, seeking a telephonic hearing for the purpose of determining whether he should be appointed legal

1 counsel in this matter. (Dkt. #33). That request was denied, because plaintiff had not properly filed it as a
2 motion addressed to the Court. In addition, the Court informed plaintiff that any such motion should set
3 forth the reasons for requesting appointed counsel and provide any relevant evidence, if any, in support
4 thereof.

5 Despite this, on June 30, 2008, plaintiff filed another letter addressed to the Clerk, in which he
6 now requests a continuance in this matter – with no specified end thereto other than until, he states, he can
7 better understand what it is the Court wants him to do – because he does not understand anything stated in
8 the pretrial order. This is why, plaintiff states, he requested the telephonic hearing to request appointment
9 of legal counsel. He asserts the terms of the pretrial order are too complicated, and asks what he has to do
10 get legal counsel appointed for him, or, in the alternative, asks to be directed to any legal book, form or
11 other resource to which he can turn to help him in that regard.

12 Clearly, plaintiff is able to read and write, as he has been able to make himself understood through
13 this and a number of other filings he has submitted to the Court. Apparently, though, plaintiff has chosen
14 not to read the Court’s prior order regarding his telephonic hearing request. Once again, plaintiff has not
15 properly addressed his request for a continuance as a motion. Nevertheless, the Court shall address it as
16 such, though deny it for the reasons set forth below. Plaintiff is warned, however, that all future requests
17 for court action must be properly noted as motions in accordance with Federal Rule of Civil Procedure
18 (“F. R. Civ. P.”) 7 and Local Rule CR 7. Other than this request and the one addressed below, the Court
19 will not further consider any other requests for Court action not so properly noted.

20 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. While the
21 court, under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding *in forma*
22 *pauperis*, it may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331
23 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616 F.2d
24 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the
25 likelihood of success on the merits and the ability of plaintiff to articulate his claims *pro se* in light of the
26 complexity of the legal issues involved. Wilborn, 789 F.2d at 1331.

27 Plaintiff claims he is unable to proceed with this matter because he cannot understand any of the
28 legal terminology contained in the Court’s pretrial schedule order. As noted above, however, plaintiff
certainly has demonstrated no difficulty in making himself understood or in presenting his requests and

1 claims to the Court. That plaintiff may not understand, or fully understand, the legal terminology used by
2 the Court, does not, as defendants point out, place him in any different situation from many, if not most,
3 of those *pro se* prisoner plaintiffs who seek file civil rights complaints.

4 Rather, the standard for obtaining legal counsel at government expense is likelihood of success on
5 the merits and the ability of plaintiff to articulate his claims *pro se*. Plaintiff has not shown the former, he
6 certainly – again, as discussed above – has shown no difficulty in articulating his claims *pro se*, and the
7 legal issues involved in this case are not necessarily complex. Accordingly, plaintiff has not
8 demonstrated entitlement to appointment of legal counsel or the necessity for a continuance. As such, his
9 motion for a continuance and, to the extent he is again making a request for appointment of legal counsel
10 (Dkt. #34), hereby is DENIED. Plaintiff is warned that the Court will not again address any further
11 requests for the appointment of legal counsel, unless and until he demonstrates, and presents actual
12 evidence establishing, a change in the above circumstances warranting such appointment.

13 B. Plaintiff's Motion for Default and/or Production of Defendants' Addresses

14 On July 15, 2008, plaintiff submitted a letter addressed to the Clerk, in which he states he would
15 like to file a motion for default against defendants Franks and Roberts. Plaintiff asserts both defendants
16 are still DOC officials, and that the DOC are refusing to provide their addresses. First, as with his request
17 for a continuance, this request was not properly filed as a motion. In addition, plaintiff's allegations to
18 the contrary notwithstanding, he has not come forth with any evidence to show that defendants Franks
19 and Roberts are still employees of the DOC or that the DOC is preventing him from obtaining their
20 addresses. Such bare allegations, without more, is an insufficient basis upon which to find either
21 defendants or the DOC acted improperly or upon which to grant a request for default.

22 While plaintiff may feel his hands are tied without court-appointed legal counsel, again, this does
23 not place him in any different situation from the majority of *pro se* plaintiffs who also are incarcerated
24 and who have no legal knowledge or training in the law. In addition, although plaintiff may be so
25 situated, he is not prevented from attempting to pursue other avenues or contacting other outside sources
26 to obtain the addresses of defendants Franks and Roberts. For the foregoing reasons, plaintiff's request
27 for a motion for default (Dkt. #38) hereby is DENIED. For the same reasons, his request in the
28 alternative for the Court to order the DOC to provide him with those two defendants' addresses is

1 DENIED as well.¹

2 The clerk is directed to send a copy of this Order to plaintiff.

3 DATED this 24th day of July, 2008.

4
5
6 

7 Karen L. Strombom
8 United States Magistrate Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 ¹Indeed, “[i]t is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not
28 designated as a party or to which he has not been made a party by service of process.” Radio Corp. v. Hazeltine Research, Inc., 395
U.S. 100, 110 (1969). In other words, “a court has no power to adjudicate a personal claim or obligation unless it has jurisdiction
over the person of the defendant.” Id. Because the DOC is not a party to this case, the Court has no power to order it to give
plaintiff the requested addresses, even if the Court were inclined to grant plaintiff’s request.